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Description of document: Council of Inspectors General for Integrity and Efficiency (CIGIE) Integrity Committee Report for two CIGIE Investigations 2010

Requested date: 08-May-2021

Release date: 14-March-2022 (Note: release letter dated 2021 in error)

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Source of document: FOIA Request
FOIA Officer
Council of the Inspectors General on Integrity and Efficiency

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COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY

March 15, 2021

Subject: CIGIE Freedom of Information/Privacy Act Request 6330-2021-35

This letter responds to your Freedom of Information Act (FOIA) request dated May 8, 2021, to the Council of the Inspectors General on Integrity and Efficiency (CIGIE). This request was assigned FOIA case number 6330-2021-35. In your own words, you have requested the following CIGIE records: *A copy of the CIGIE Integrity Committee Report for each of these cases: IC 611, IC 640, IC 658*

After conducting a search for responsive records, CIGIE FOIA Staff learned that IC 658 did not result in an investigation. Accordingly, there is no report for it. As for the other two requested reports, they are combined in one pdf file of 45 pages; both are enclosed with this response, subject to the following FOIA redactions:

Exemption 4 (5 U.S.C. § 552(b)(4)): allows Federal agencies the discretion to withhold “... trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential...” the release of which could be competitively harmful to the submitter of the information; which could impair the government’s ability to obtain similar necessary information in a purely voluntary manner in the future; and, which could affect other governmental interests, such as program effectiveness and compliance.

Exemption 5 (5 U.S.C. § 552(b)(5)): allows the agency the discretion to withhold “...inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.” The purpose of this exemption is to protect the deliberative process by encouraging a frank exchange of views. In addition, this exemption protects from disclosure attorney-work product and attorney-client materials.

Exemption 6 (5 U.S.C. § 552(b)(6)): allows Federal agencies the discretion to withhold information the disclosure of which would “...constitute a clearly unwarranted invasion...” of individual privacy and might adversely affect the individual and his/her family.

Exemption 7 (5 U.S.C. § 552(b)(7)): protects from disclosure “records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information [...]

(C) could reasonably be expected to constitute an unwarranted invasion of personal privacy[.]”

If you have questions about this response, you may contact the CIGIE FOIA Public Liaison at telephone number (202) 478-8265 or by sending an email to FOIASTAFF@cigie.gov. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
ogis@nara.gov
(202) 741-5770
(877) 684-6448 (toll free)
(202) 741-5769 (facsimile)

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

A requester may appeal a determination denying a FOIA request in any respect to the CIGIE Chairperson c/o Office of General Counsel, Council of the Inspectors General on Integrity and Efficiency, 1717 H Street NW, Suite 825, Washington, DC 20006. The appeal must be in writing, and must be submitted either by:

- (1) Regular mail sent to the address listed in this subsection, above; or
- (2) By fax sent to the FOIA Officer at (202) 254-0162; or
- (3) By email to FOIAAPPEAL@cigie.gov.

Your appeal must be received within 90 days of the date of this letter. The outside of the envelope should be clearly marked "FOIA APPEAL."

Sincerely,



Faith R. Coutier
Senior Assistant General Counsel

Enclosure: as stated



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

INVESTIGATIVE REPORT

Commodity Futures Trading Commission, Office of Inspector General

DATE ISSUED: APRIL 20, 2010

REPORT NUMBER: IC 611



THE ATTACHED INVESTIGATIVE REPORT AND EXECUTIVE SUMMARY ARE THE PROPERTY OF THE OFFICE OF INSPECTOR GENERAL. THE CONTENTS MAY NOT BE PHOTOCOPIED OR OTHERWISE REPRODUCED, TRANSMITTED OR COMMUNICATED WITHOUT THE EXPRESS APPROVAL OF THE INSPECTOR GENERAL. THE REPORT IS FOR OFFICIAL USE ONLY, AND ITS DISCLOSURE TO UNAUTHORIZED PERSONS IS PROHIBITED. PUBLIC AVAILABILITY TO BE DETERMINED UNDER 5 U. S.C. § 522. AUTHORIZED RECIPIENTS OF THE INVESTIGATIVE REPORT SHOULD UNDERTAKE TO PREVENT UNAUTHORIZED DISCLOSURE OF THE CONTENTS.

MILTON A. MAYO, JR.
ACTING INSPECTOR GENERAL

OFFICE OF INSPECTOR GENERAL

INVESTIGATIVE REPORT – A. ROY LAVIK

INTEGRITY COMMITTEE REFERRAL

OIG CONTROL NO. 209-3062 (IC 611)

EXECUTIVE SUMMARY

In August 2009, the Equal employment Opportunity Commission, Office of Inspector General, at the request of the Integrity Committee of the Council of Inspectors General for Integrity and Efficiency initiated an investigation into allegations that A. Roy Lavik, Inspector General for the Commodity Futures Trading Commission had exerted improper influence in the course of the procurement action to select an accounting firm to conduct the Financial Statement Audits for the Commodity Futures Trading Commission. The Equal Employment Opportunity Commission, Office of Inspector General interviewed five individuals, (b) (6), (b) (7)(C) and A. Roy Lavik in connection with this matter. Additionally, the Office of Inspector General obtained and reviewed all pertinent documents and records. The Office of Inspector General has made credibility resolutions to the extent necessary where material factual disputes exist.¹

The Equal Employment Opportunity Commission, Office of Inspector General finds that there is **insufficient evidence** to establish, by a preponderance of the evidence², that A. Roy Lavik, Inspector General for the Commodity Futures Trading Commission exerted improper influence in connection with the deliberations of the Technical Evaluation Committee for CFG-08-SO-0165, the procurement action to select an accounting firm to conduct the Financial Statement Audits for the Commodity Futures Trading Commission.

In so doing, we considered the fact that both (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) testified that they were not pressured or coerced to go along with Inspector General Lavik's choice of (b) (4). Additionally, the totality of (b) (6), (b) (7)(C) testimony supported a conclusion that his statements to (b) (6), (b) (7)(C), which formed the basis for (b) (6), (b) (7)(C) belief that (b) (6), (b) (7)(C) had been coerced were actually expressions of his (b) (6), (b) (7)(C) frustrations that the Technical Evaluation Committee was going to make what he considered to be a bad decision by (b) (4).

¹ Credibility is dependent upon the willingness of the witness to tell the truth and upon his or her ability to do so. / *McCormick on Evidence III n. 1 (4th ed. 1992)*. The credibility of a witness may be attacked by any of the following methods: 1) proof of prior inconsistent statements; 2) proof of witness' bias or self-interest; 3) introduction of extrinsic evidence that contradicts the witness' testimony; 4) attack upon the character of the witness; 5) showing a defect in the witness to observe, remember or recount matters testified about.

² A preponderance of the evidence is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue. 5 C. F. R. Section 1201.56(c)(2) 2008.

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INTRODUCTION

On June 19, 2009, Aletha L. Brown, former inspector general of the U.S. Equal Employment Opportunity Commission (hereinafter EEOC) Office of Inspector General (hereinafter OIG) received an email from Mary K. Conway, Program Analyst on behalf of the Integrity Committee, requesting that the EEOC OIG lead the investigation of IC 611. IC 611 involved allegations of procurement improprieties by A. Roy Lavik, Inspector General for the Commodity Futures Trading Commission (hereinafter CFTC) in connection with the selection of an accounting firm to conduct the CFTC 2009 Financial Statement Audit (hereinafter FSA). The EEOC OIG agreed to conduct the investigation of IC 611. On July 2, 2009, Inspector General Brown, and Joyce T. Willoughby, Counsel to the Inspector General, participated in a teleconference with the members of the Integrity Committee Working Group (ICWG) to discuss the matter. On August 3, 2009, the EEOC OIG received written authorization from Kevin L. Perkins, Chair, Integrity Committee to conduct the investigation of IC 611. On August 31, 2009, the Integrity Committee approved the investigative plan submitted by the EEOC OIG. Field work on this matter commenced in late October 2009, and was completed in January 2010.

BACKGROUND

This complaint was an outgrowth of actions that occurred during the course of the procurement action to select an accounting firm to conduct the 2009 FSA for the CFTC. The record reflects that the process for selection of an accounting firm to conduct the FSA began in earnest in the summer of 2008. On August 19, 2008, William M. Roberson, the Contracting Officer (hereinafter CO) issued a Request For Quotation (hereinafter RFQ) for "Audit Services for Financial Statements of the Commodity Futures Trading Commission" which required that quotations be received by September 16, 2008. An amended RFQ was subsequently issued on September 8, 2008, to incorporate changes to the terms and conditions of the RFQ and to respond to questions submitted that pertained to the RFQ. This amended RFQ required that quotations be received by September 23, 2008.

The following four firms submitted quotations:

1. (b) (4)
2. (b) (4)
3. (b) (4)
4. (b) (4)

By memorandum dated September 24, 2008, the CO designated the members of the Technical Evaluation Committee (hereinafter referred to as TEC). The TEC for this procurement action included (b) (6), (b) (7)(C)

and A. Roy Lavik, Inspector General (Voting member). The CO served as a non-voting member of the TEC. The TEC was tasked with evaluating the quotations that were submitted in response to the RFQ.

INVESTIGATIVE REPORT – A. ROY LAVIK

INTEGRITY COMMITTEE REFERRAL

OIG CONTROL NO. 209-3062 (IC 611)

On September 24, 2008, the CO met with the members of the TEC. The purpose of the meeting was to review the Technical Evaluation Plan (hereinafter TEP) and brief the members on the importance of security safeguards, the consequences of security leaks, and the need to follow the security practices outlined in the TEP. Each TEC member was also required to read and sign a Confidentiality Statement and Conflict of Interest Certification following the meeting. Between September 24, 2008, and October 21, 2008, the TEC members were tasked with independently reviewing and evaluating the quotations submitted by the four bidding firms.

On October 21, 2008, the Contracting Officer convened a meeting for the purpose of discussing the committee members' evaluations and coming to a consensus rating regarding the quotations submitted by the four firms. Once the meeting started the Contracting Officer determined that some of the TEC members may have needed additional time to complete their independent evaluations of the quotations. Accordingly, the meeting was rescheduled for October 23, 2008. The October 23rd meeting occurred as scheduled. The TEC did not complete its deliberations so it reconvened on October 24, 2008. During the course of that meeting a dispute between the Contracting Officer and the Inspector General ensued regarding who had the ultimate authority to select the successful firm. The Inspector General took the position that he had the authority to make the ultimate decision, and the Contracting Officer opined that he was the one to make the decision. The issue was not resolved in this meeting; however, the TEC proceeded with the preparation of the Technical Evaluation Report over the next few weeks.

In accord with the evaluation criteria described in the RFQ and the procedures set forth in the Technical Evaluation Plan the following criteria and associated relative weightings were assigned:

- | | |
|---|-----|
| 1. Past Performance | 50% |
| 2. Key Personnel | 30% |
| 3. Technical Understanding and Approach | 20% |

For each evaluation criterion the TEC looked at the significant strengths, minor strengths, significant weaknesses, minor weaknesses, and risks. The technical evaluation criteria were rated by assigning adjective ratings of: (1) Excellent; (2) Good; (3) Acceptable; (4) Unacceptable; and (5) Neutral. The overall consensus results were that (b) (4)

(b) (4)

The TEC submitted the initial draft technical evaluation report to the Contracting Officer on November 20, 2008. In an undated document the Contracting Officer provided the TEC with feedback on the Technical Evaluation Report. The document indicated that the Contracting Officer had concerns as to whether the report as initially written was consistent with regulatory requirements and agency policy governing technical evaluation of contract proposals. He also expressed concerns whether the report could withstand scrutiny by third parties in the event a

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protest was filed by an unsuccessful offeror. The document expressed concerns or identified problems in the following general areas:

1. Many of the adjectival ratings in the report were not supported by the underlying narratives.
2. The report was inconsistent between firms.
3. The report was to serve as the basis to support the award selection, and as a guide in debriefing unsuccessful offerors. As initially written it lacked the specificity to adequately support the TEC's findings.
4. The report mixed the evaluations between criteria.
5. The report did not contain all of the TEC's conclusions from the consensus meetings.
6. The report contained redundancies.
7. The report needed updating to reflect the current procurement.

There were several drafts of the Technical Evaluation Report for Phase 1 of the evaluation that were prepared between November 20, 2008, and December 30, 2008, the date the final Technical Evaluation Report was signed. The Contracting Officer advised all of the bidders of the results of Phase 1 of the Technical Evaluation process, and submitted follow-up questions that arose in Phase 1 (b) (4) that remained in contention and proceeded to Phase 2 of the evaluation process. Phase 2 of the Technical Evaluation process was completed on January 9, 2009. The TEC determined (b) (4) superior bid. At that time the TEC was given the pricing information submitted in connection with the two bids. The final bid submitted by (b) (4). The final price submitted by (b) (4). The differentiation in price was approximately (b) (4).

On January 9, 2009, the Contracting Officer notified the TEC that he intended to make the "best value" selection, and that in his opinion, the (b) (4) price differentiation made (b) (4) (b) (4) the best value for the Agency even though (b) (4) superior by the TEC. On January 12, 2009, the Inspector General notified (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), and (b) (4) of his intent to award the contract to (b) (4). On March 6, 2009, (b) (6), (b) (7), who had succeeded (b) (6), (b) (7) as (b) (6), (b) (7)(C), informed the Inspector General that he had made the decision to select (b) (4) because he believed that the price differentiation between (b) (4) outweighed the TEC's findings that (b) (4) superior firm. In doing so, he (b) (5).

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The Inspector General, believing that he had the authority to make the selection contacted Congressional staffers, and on March 11, 2009, met with staffers from the committees that have oversight of the CFTC and the Government Oversight Committee.

On March 20, 2009, there was a meeting to discuss the issue of who had the ultimate authority to make the selection of the successful bidder for this contract. Participants in the meeting included Inspector General Lavik, Judith Ringle, Counsel to the Inspector General, William Roberson, the Contracting Officer, Terry Arbit, CFTC General Counsel, and Brad Berry, Deputy General Counsel, Litigation. During the course of that meeting the Office of General Counsel (OGC) representatives advised the Inspector General that there were allegations of improper communications and undue influence by the Inspector General that were contained in Contracting Officer's procurement file for the contract in question. The OGC representatives further advised that the records included summaries or notes of conversations the Contracting Officer had with (b) (6), (b) (7)(C) [REDACTED].

Believing that the matter was of such a nature that it should be referred to the Integrity Committee of the CIGIE, the Inspector General initiated a self referral which gave rise to this investigation.

William Roberson, the Contracting Officer finally awarded the contract to (b) (4) [REDACTED] on May 19, 2009.

sis for

INVESTIGATIVE REPORT – A. ROY LAVIK

INTEGRITY COMMITTEE REFERRAL

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FINDINGS AND CONCLUSIONS

The issue in this investigation is whether A. Roy Lavik, Inspector General for the CFTC and member of the TEC for CFTC contract CFG-08-SO-0165 (for the FY 2009 CFTC Financial Statement Audit) exerted improper influence or coercion on one or both of the other two members of the TEC, (b) (6), (b) (7)(C), both of whom are his subordinates, in order to ensure that (b) (4) was awarded the contract.

Preliminarily, before the question of whether Inspector General Lavik coerced or exerted improper influence over (b) (6), (b) (7)(C) can be resolved, we must first address the question of whether Inspector General Lavik had a preference or bias in favor of (b) (4). Clearly if there is insufficient evidence to support a finding that Inspector General Lavik favored (b) (4) becomes far less likely that he would have had any motivation to coerce or exert improper influence over the other TEC members.

The EEOC OIG finds that the totality of the evidence adduced supports a finding that Inspector General Lavik did express a preference, or at least an interest (b) (4) being selected as the successful bidder in the contract at issue. It is important to note the context of Mr. Lavik's remarks about wanting (b) (4). Both (b) (6), (b) (7)(C) credibly testified that they had discussions with Mr. Lavik prior to the commencement of the procurement process. During these discussions he indicated that he was pleased with (b) (4) and would like to select (b) (4) when it was time to rebid the FSA contract. They testified

(b) (4), (b) (5)

While clearly Mr. Lavik had openly expressed a desire to have (b) (4) the FSA for CFTC, there is insufficient evidence to support a finding that his desire, or preference, or however one would characterize it, was so pervasive that it jeopardized the integrity of the procurement process in connection with this contract, particularly as it relates to the entitlement of all bidders to receive fair treatment and consideration. In this regard, (b) (6), (b) (7)(C) credibly testified that Mr. Lavik (b) (4), (b) (5) other well qualified firms. See Exhibit #5, Page 79, Lines 1 through 12.

It is important to note that (b) (6), (b) (7)(C) testimony, and our finding is contrary to the perceptions, belief and testimony of (b) (6), (b) (7)(C). It is clear from (b) (6), (b) (7)(C) notes in the official file (Exhibit #1), his Memorandum of Record (Exhibit #2) and his testimony (Exhibit # 3) that he is of the opinion that (b) (4) (b) (5) (b) (4), (b) (5) particularly (b) (6), (b) (7)(C).

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These perceptions are mostly based on (b) (5), (b) (6), (b) (7)(C)

(b) (5), (b) (6), (b) (7)(C)

(b) (5), (b) (6), (b) (7)(C)

(b) (5), (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) and more importantly, (b) (6), (b) (7)(C). For improper influence to be shown in Government procurement actions inference cannot be substituted for the “clear and convincing” proof required. Heyer Products Co. v. United States, 140 F. Supp. 409 (1956). The inferences that may have been created by certain remarks made by Inspector General Lavik in the consensus deliberations, and the remarks made at various times by (b) (6), (b) (7)(C) are not enough to establish that improper influence or coercion occurred in this matter.

(b) (5), (b) (6), (b) (7)(C)

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(b) (5), (b) (6), (b) (7)(C)

Viewing the totality of (b) (6), (b) (7)(C) testimony along with that of (b) (6), (b) (7)(C) and (b) (6), (b)

(b) (5), (b) (6), (b) (7)(C), (b) (4)

In conclusion, the EEOC OIG finds that the evidence adduced in this investigation does not support a finding that A. Roy Lavik, Inspector General of the CFTC coerced, pressured or intimidated either (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) before or during the consensus deliberations of the TEC in connection with CFTC contract CF1G-08-SO-0165.

Council of the Inspectors General for Integrity and Efficiency

Integrity Committee Investigation IC#640



February 28, 2011

Treasury Inspector General for Tax Administration

Washington, D.C.

EXECUTIVE SUMMARY

On July 6, 2010, the Council of the Inspectors General for Integrity and Efficiency (CIGIE) Integrity Committee, initiated an investigation into allegations that (b) (6), (b) (7)(C), Inspector General, United States Postal Service (USPS), abused his position through an arbitrary and capricious exercise of power (b) (6), (b) (7)(C)

[REDACTED]

In addition to the allegations against (b) (6), (b) (7)(C), investigations were also initiated against (b) (6), (b) (7)(C), former Assistant Inspector General for Investigations (AIGI) (b) (6), (b) (7)(C), AIGI; and (b) (6), (b) (7)(C) Deputy Assistant Inspector General for Investigations (DAIGI).

The matter involving the four respondents in this investigation was based on a complaint referred to the CIGIE Integrity Committee on January 4, 2010. The Treasury Inspector General for Tax Administration was asked to provide the investigator and the investigation was conducted from June 10, 2010 to December 6, 2010. All respondents provided testimony during the investigation.

We did not substantiate the allegation that (b) (6), (b) (7)(C) [REDACTED] abused their position (b) (6), (b) (7)(C) [REDACTED]

During the course of the investigation, additional complaints were provided to the Integrity Committee. Each of these complaints is addressed individually in this report. (b) (6), (b) (7)(C) [REDACTED]

BACKGROUND:

1. The complainant, (b) (6), (b) (7)(C), submitted a complaint to the Integrity Committee on January 4, 2010. [Exhibit 1] In the complaint, (b) (6), (b) (7)(C) alleged that (b) (6), (b) (7)(C) Inspector General, USPS, had exhibited a pattern (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

until the present and included other senior executives with the USPS OIG Office of Investigations.

2. In his complaint, (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

3. (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

4. In addition to the details provided (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C)

5. Based upon a complaint analysis by the Treasury Inspector General for Tax Administration investigator and the Integrity Committee, allegations were developed against (b) (6), (b) (7)(C). All individuals were notified by the Chairman of the Integrity Committee on July 6, 2010, [Exhibits 2, 3, 4, and 5] and then contacted by the investigator prior to initiation of witness interviews.

6. Subsequent to the original complaint, the CIGIE received additional complaints addressing many of the allegations raised by (b) (6), (b) (7)(C).

a. (b) (6), (b) (7)(C)

b. (b) (6), (b) (7)(C)

c. (b) (6), (b) (7)(C)

d. (b) (6), (b) (7)(C)

7. Much of the information provided in the anonymous complaints is similar to information provided in (b) (6), (b) (7)(C) January 4, 2010, complaint. Events described appear to be second-hand information or a continuation of the original complaint but from a different perspective. No effort was made to determine the origin of the complaints but the issues raised and writing style suggested all were generated by the same individual or someone familiar with the original complaint. Information provided that is being investigated as part of other pending Equal Employment Opportunity complaints, grievances, or whistleblower/retaliation complaints was not included in this Report.

8. Every effort was made to interview witnesses listed in the original complaint. In addition to the identified witness, we reviewed numerous vacancy announcement files, reviewed human resource practices with USPS-OIG Human Resources (HR) officials, and interviewed other USPS-OIG executives.

INVESTIGATIVE FINDINGS

(b) (6), (b) (7)(C), (b) (5)



(b) (6), (b) (7)(C), (b) (5)



FIGURE 1: TOTAL OFFICE OF INVESTIGATION HIRES BY FISCAL YEAR

Fiscal Year	Total by Sex		Minority		White		Total Hires
	Male	Female	Male	Female	Male	Female	
2006	169	73	38	28	131	45	242
2007	63	21	17	5	46	16	84
2008	22	3	7	0	15	3	25
2009	28	12	9	5	19	7	40

Note: Fiscal Year 2005 hires are not available by function; total USPS-OIG hires were 174.

FIGURE 2: OFFICE OF INVESTIGATION ORGANIZATION STATISTICS

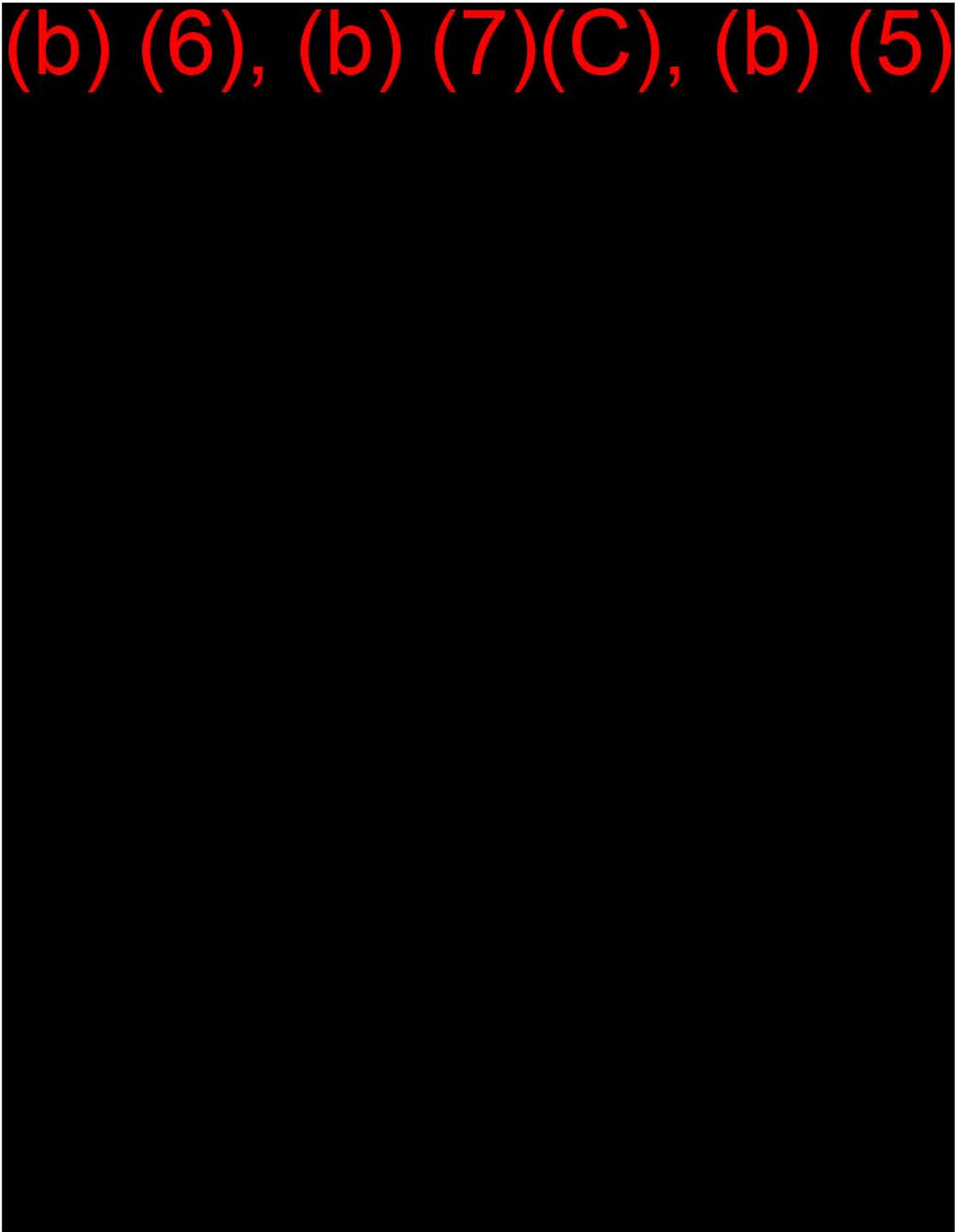
Fiscal Year	Total Employees	Field Offices	Total Offices	SACs
2005	847	13	45	17
2006	1,061	13	93	17
2007	1,148	13	Unknown0	15
2008	1,017	9	101	10
2009	1,023	8	98	11
2010	1,106	8	102	10

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)



(b) (6), (b) (7)(C), (b) (5)



(b) (6), (b) (7)(C), (b) (5)



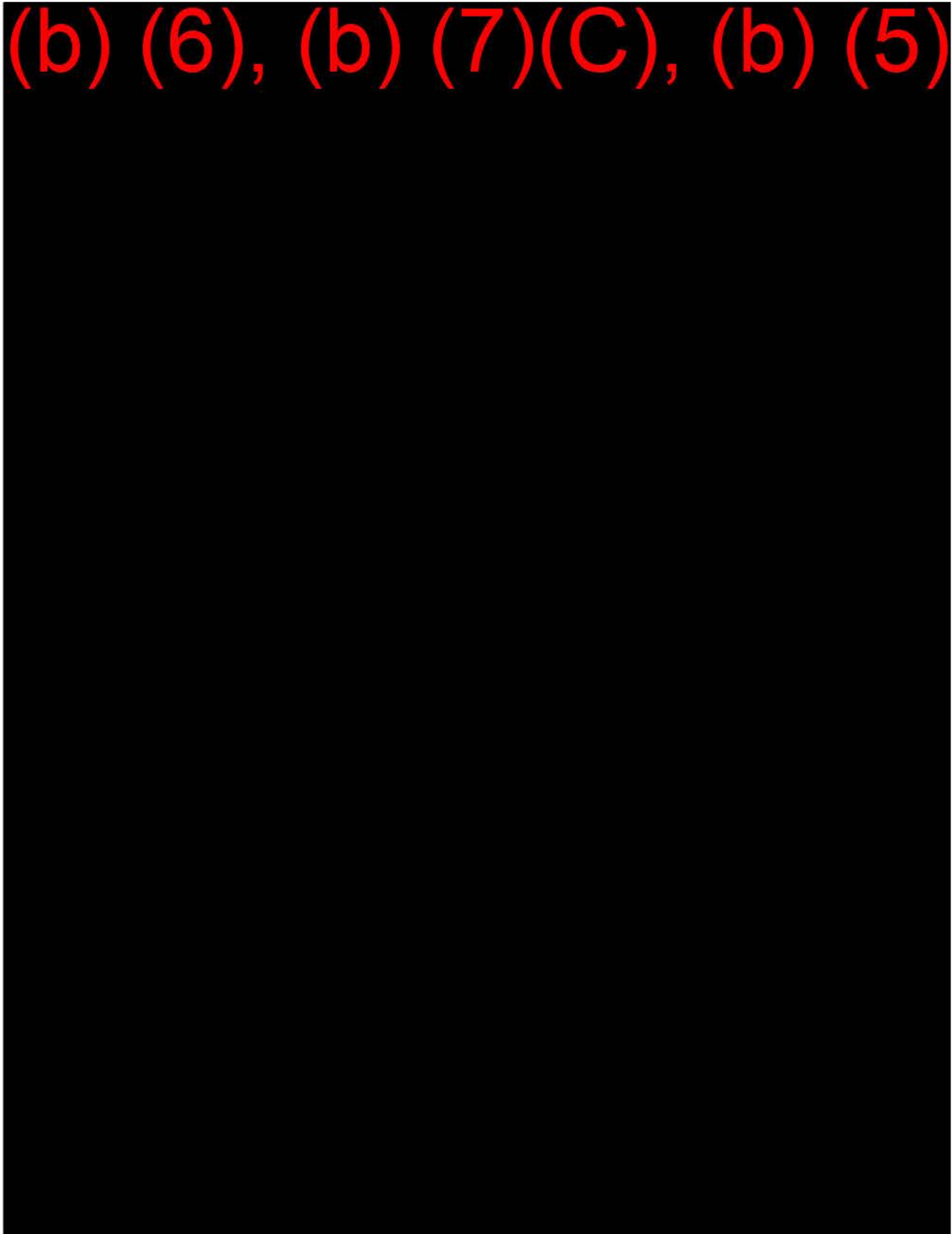
(b) (6), (b) (7)(C), (b) (5)



(b) (6), (b) (7)(C), (b) (5)



(b) (6), (b) (7)(C), (b) (5)



(b) (6), (b) (7)(C), (b) (5)



(b) (6), (b) (7)(C), (b) (5)



(b) (6), (b) (7)(C), (b) (5)



(b) (6), (b) (7)(C), (b) (5)



(b) (6), (b) (7)(C), (b) (5)



(b) (6), (b) (7)(C), (b) (5)



(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)



36. Applicable Standards:

a. Title 5 USC Section 2301. Merit System Principles [Exhibit 11]

(a) This section shall apply to--

- (1) an Executive agency; and
- (2) the Government Printing Office.

(b) Federal personnel management should be implemented consistent with the following merit system principles:

(1) Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge and skills, after fair and open competition which assures that all receive equal opportunity.

(2) All employees and applicants for employment should receive fair and equitable treatment in all aspects of personnel management without regard to political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition, and with proper regard for their privacy and constitutional rights.

(3) Equal pay should be provided for work of equal value, with appropriate consideration of both national and local rates paid by employers in the private sector, and appropriate incentives and recognition should be provided for excellence in performance.

(4) All employees should maintain high standards of integrity, conduct, and concern for the public interest.

(5) The Federal work force should be used efficiently and effectively.

(6) Employees should be retained on the basis of adequacy of their performance, inadequate performance should be corrected, and employees should be separated who cannot or will not improve their performance to meet required standards.

(7) Employees should be provided effective education and training in cases in which such education and training would result in better organizational and individual performance.

(8) Employees should be--

(A) protected against arbitrary action, personal favoritism, or coercion for partisan political purposes, and

(B) prohibited from using their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for election.

(9) Employees should be protected against reprisal for the lawful disclosure of information which the employees reasonably believe evidences--

(A) a violation of any law, rule, or regulation, or

(B) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) In administering the provisions of this chapter--

(1) with respect to any agency (as defined in section 2302(a)(2)(C) of this title), the President shall, pursuant to the authority otherwise available under this title, take any action including the issuance of rules, regulations, or directives; and

(2) with respect to any entity in the executive branch which is not such an agency or part of such an agency, the head of such entity shall, pursuant to authority otherwise available, take any action, including the issuance of rules, regulations, or directives; which is consistent with the provisions of this title and which the President or the head, as the case may be, determines is necessary to ensure that personnel management is based on and embodies the merit system principles.

b. Title 5 USC Section 2302, Prohibited personnel practices [Exhibit 12]:

(a)(1) For the purpose of this title, "prohibited personnel practice" means any action described in subsection (b).

(2) For the purpose of this section -

(A) "personnel action" means -

- (i) an appointment;
- (ii) a promotion;
- (iii) an action under chapter 75 of this title or other disciplinary or corrective action;
- (iv) a detail, transfer, or reassignment;
- (v) a reinstatement;
- (vi) a restoration;
- (vii) a reemployment;
- (viii) a performance evaluation under chapter 43 of this title;
- (ix) a decision concerning pay, benefits, or awards, concerning education or training if

the education or training may reasonably be expected to lead to an appointment, promotion, performance evaluation, or other action described in this subparagraph;

(x) a decision to order psychiatric testing or examination; and

(xi) any other significant change in duties, responsibilities, or working conditions; with respect to an employee in, or applicant for, a covered position in an agency, and in the case of an alleged prohibited personnel practice described in subsection (b)(8), an employee or applicant for employment in a Government corporation as defined in section 9101 of title 31;

(B) "covered position" means, with respect to any personnel action, any position in the competitive service, a career appointee position in the Senior Executive Service, or a position in the excepted service, but does not include any position which is, prior to the personnel action --

(i) excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy-advocating character; or

(ii) excluded from the coverage of this section by the President based on a determination by the President that it is necessary and warranted by conditions of good administration; and

(C) "agency" means an Executive agency and the Government Printing Office, but does not

include -

(i) a Government corporation, except in the case of an alleged prohibited personnel practice described under subsection (b)(8);

(ii) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and, as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or

(iii) the General Accounting Office.

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority -

(1) discriminate for or against any employee or applicant for employment -

(A) on the basis of race, color, religion, sex, or national origin, as prohibited under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16);

(B) on the basis of age, as prohibited under sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a);

(C) on the basis of sex, as prohibited under section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d));

(D) on the basis of handicapping condition, as prohibited under section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791); or

(E) on the basis of marital status or political affiliation, as prohibited under any law, rule, or regulation;

(2) solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on the personal knowledge or records of the person furnishing it and consists of -

- (A) an evaluation of the work performance, ability, aptitude, or general qualifications of such individual; or
- (B) an evaluation of the character, loyalty, or suitability of such individual;
- (3) coerce the political activity of any person (including the providing of any political contribution or service), or take any action against any employee or applicant for employment as a reprisal for the refusal of any person to engage in such political activity;
- (4) deceive or willfully obstruct any person with respect to such person's right to compete for employment;
- (5) influence any person to withdraw from competition for any position for the purpose of improving or injuring the prospects of any other person for employment;
- (6) grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment (including defining the scope or manner of competition or the requirements for any position) for the purpose of improving or injuring the prospects of any particular person for employment;
- (7) appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement, in or to a civilian position any individual who is a relative (as defined in section 3110(a)(3) of this title) of such employee if such position is in the agency in which such employee is serving as a public official (as defined in section 3110(a)(2) of this title) or over which such employee exercises jurisdiction or control as such an official;
- (8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of -
 - (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences -
 - (i) a violation of any law, rule, or regulation, or
 - (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or
 - (B) any disclosure to the Special Counsel, or to the Inspector General of an agency or another employee designated by the head of the agency to receive such disclosures, of information which the employee or applicant reasonably believes evidences -
 - (i) a violation of any law, rule, or regulation, or
 - (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;
- (9) take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for employment because of -
 - (A) the exercise of any appeal, complaint, or grievance right granted by any law, rule, or regulation;
 - (B) testifying for or otherwise lawfully assisting any individual in the exercise of any right referred to in subparagraph (A);
 - (C) cooperating with or disclosing information to the Inspector General of an agency, or the Special Counsel, in accordance with applicable provisions of law; or
 - (D) for refusing to obey an order that would require the individual to violate a law;
- (10) discriminate for or against any employee or applicant for employment on the basis of conduct which does not adversely affect the performance of the employee or applicant or the performance of others; except that nothing in this paragraph shall prohibit an agency from taking into account in determining suitability or fitness any conviction of the employee or applicant for any crime under the laws of any State, of the District of Columbia, or of the United States;
- (11) (A) knowingly take, recommend, or approve any personnel action if the taking of such action would violate a veterans' preference requirement; or
 - (B) knowingly fail to take, recommend, or approve any personnel action if the failure to take such action would violate a veterans' preference requirement; or
- (12) take or fail to take any other personnel action if the taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 of this title. This subsection shall not be construed to authorize the withholding of information from the Congress or the taking of any personnel action against an employee who discloses information to the Congress.

(c) The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service laws, rules, and regulations, and other aspects of personnel management, and for ensuring (in consultation with the Office of Special Counsel) that agency employees are informed of the rights and remedies available to them under this chapter and chapter 12 of this title. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be similarly responsible within the limits of the delegation.

c. 5 Code of Federal Regulations (CFR) Part 2635, Standards of Ethical Code for Employees of the Executive Branch, “Section 2635.101, “Basic obligation of public service” [Exhibit 13]

(a) *Public service is a public trust.* Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations.

(b) *General principles.* The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper.

(1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, except as permitted by subpart B of this part, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those—such as Federal, State, or local taxes—that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

(14) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards set forth in this part. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts.

CONCLUSIONS

(b) (6), (b) (7)(C) Actions (b) (6), (b) (7)(C)

We did not substantiate the allegation that (b) (6), (b) (7)(C) abused his position (b) (6), (b) (7)(C)

First, USPS-OIG has well-documented procedures on the recruitment and selection of personnel. USPS Management Instruction EL-350-2007-3 provides instructions for filling posts, to include how to determine the area of consideration and sources of recruitment, how to publicize the vacancy, and how to evaluate and rating applicants. The testimony of the entire HR team—

(b) (6), (b) (7)(C) (b) (6), (b) (7)(C), (b) (5)

Second, USPS-OIG underwent a reorganization in 2006 that increased OIG investigation personnel from 847 in 2005 to 1,148 in 2007. The USPS Board of Governors Chairman and the Postmaster General realigned all investigations of employee misconduct, including theft of mail, to the OIG from the Postal Inspection Service. The Postal Service has also conducted a business-case analysis that has resulted in the reduction and consolidation of Postal Regions. As a result, OIG undertook a reorganization effort to mirror the Postal Service; OIG field offices have dropped from 13 to eight and the number of SACs has dropped from 17 to 10.

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C)

Federal law requires that selection and advancement of employees be determined on the basis of ability, knowledge, and skills, and include fair and open competition. The Merit Systems Protection Board defines "abuse of authority" as: "an arbitrary or capricious exercise of power by a Federal official or employee that adversely affects the rights of any person or that results in personal gain to preferred other persons." *D'Elia v. Department of the Treasury*, 60 M.S.P.R. 226, 232 (1993). Federal law also requires that recruitment be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity. 5 USC § 2301 (b). The law further provides that any employee, who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority, grant any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment for the purpose of improving or injuring the prospects of any particular person for employment. 5 USC § 2302 (b). The hiring of

friends violates the ethical code that requires impartiality. Standards of Ethical Conduct for Employees of the Executive Branch require that employees act impartially, disclose abuse to appropriate authorities, not use one's public office for private gain nor use one's Government position to coerce or induce another person to provide any benefit to himself, friends or relatives. They also require that employees put forth an honest effort in the performance of their duties and to endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards. 5 CFR § 2635.101 and 702.

A review of hiring actions noted by the complainant found no involvement of (b) (6), (b) (7)(C) during the hiring process. HR officials testified (b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5) All executives testified (b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C) testified (b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

None of the witnesses ever heard (b) (6), (b) (7)(C) direct any hiring action. Witnesses testified

(b) (6), (b) (7)(C), (b) (5)

In conclusion, no evidence or testimony was developed that showed (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) *Actions in* (b) (6), (b) (7)(C)

We did not substantiate the allegation that (b) (6), (b) (7)(C) abused his position (b) (6), (b) (7)(C) . In reaching our conclusion, we considered: (b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

In conclusion, no evidence or testimony was developed that showed (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

[Redacted]

(b) (6), (b) (7)(C) Actions (b) (6), (b) (7)(C)

[Redacted]

We did not substantiate the allegation that (b) (6), (b) (7)(C) abused his position (b) (6), (b) (7)(C)

[Redacted] In reaching our conclusion, we considered: (b) (6), (b) (7)(C), (b) (5)

[Redacted]

(b) (6), (b) (7)(C), (b) (5)

[Redacted]

(b) (6), (b) (7)(C), (b) (5)

In conclusion, no evidence or testimony was developed that showed (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C) Actions (b) (6), (b) (7)(C)

We did not substantiate the allegation that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

reaching our conclusion, we considered: (b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)



(b) (6), (b) (7)(C), (b) (5)

In conclusion, no evidence or testimony was developed that showed (b) (6), (b) (7)(C):

(b) (6), (b) (7)(C)

Emergent Allegation that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) (b) (6), (b) (7)(C)

(b) (6), (b) (7)(C), (b) (5)

(b) (6), (b) (7)(C), (b) (5)

Based on the evidence available, there is no indication (b) (6), (b) (7)(C) was involved in the planning of the Evening Management Meeting nor is there evidence that (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C), (b) (6), (b) (7)(C)

LIST OF REFERENCED EXHIBITS

1. Complaint from (b) (6), (b) (7)(C) dated January 4, 2010.
2. Integrity Committee notification letter to (b) (6), (b) (7)(C) Inspector General, United States Postal Service, dated July 6, 2010.
3. Integrity Committee notification letter to (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), dated July 6, 2010.
4. Integrity Committee notification letter to (b) (6), (b) (7)(C) Assistant Inspector General (Investigations), United States Postal Service, dated July 6, 2010.
5. Integrity Committee notification letter to (b) (6), (b) (7)(C), Deputy Assistant Inspector General (Investigations), United States Postal Service, dated July 6, 2010.
6. Transcript of June 10, 2010, interview of (b) (6), (b) (7)(C) (complainant.)
7. Letter from (b) (6), (b) (7)(C) to the Integrity Committee, dated August 6, 2010.
8. Letter from (b) (6), (b) (7)(C) to the Integrity Committee, Subject: Anonymous Complaint, dated September 8, 2010.
9. Letter from (b) (6), (b) (7)(C) to the Integrity Committee, Subject: Anonymous Complaint Concerning Assistant Inspector General for Investigations (b) (6), (b) (7)(C) dated November 15, 2010.
10. Letter from (b) (6), (b) (7)(C) (complainant) to the Integrity Committee, Subject: Ongoing United States Postal Service-Office of Inspector General Investigation, dated December 13, 2010.
11. Title 5 USC 2301, Merit System Principles.
12. Title 5 USC 2302, Prohibited Personnel Practices.
13. 5 CFR 2635, Standards of Ethical Conduct for Employees of the Executive Branch.
14. United States Postal Service Management Instruction EL-350-2007-3, External Recruitment and Selection for Executive and Administrative Service Positions, dated August 1, 2007.
15. United States Postal Service-Office of Inspector General Vacancy Announcement #08-51 with supporting documents.

16. United States Postal Service-Office of Inspector General Vacancy Announcement #08-53 with supporting documents.

17. Email dated December 20, 2001, Subject: Info, from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C)

18. United States Postal Service-Office of Inspector General Vacancy Announcement #08-138 with supporting documents.

19. United States Postal Service-Office of Inspector General Vacancy Announcement #09-12 with supporting documents.

20. United States Postal Service-Office of Inspector General Vacancy Announcement #09-53 with supporting documents.

21. Transcript of July 27, 2010, interview of (b) (6), (b) (7)(C) (witness.)

22. Transcript of July 27, 2010, interview of (b) (6), (b) (7)(C) (witness.)

23. Transcript of July 27, 2010, interview of (b) (6), (b) (7)(C) (witness.)

24. Transcript of August 9, 2010, interview of (b) (6), (b) (7)(C) (witness.)

25. Transcript of August 9, 2010, interview of (b) (6), (b) (7)(C) (witness.)

26. Transcript of August 12, 2010, interview of (b) (6), (b) (7)(C) (witness.)

27. Transcript of August 12, 2010, interview of (b) (6), (b) (7)(C) (witness.)

28. Transcript of August 12, 2010, interview of (b) (6), (b) (7)(C) (witness.)

29. Transcript of August 12, 2010, interview of (b) (6), (b) (7)(C) (witness.)

30. Transcript of August 12, 2010, interview of (b) (6), (b) (7)(C) (witness.)

31. Transcript of August 12, 2010, interview of (b) (6), (b) (7)(C) (witness.)
32. Transcript of August 16, 2010, interview of (b) (6), (b) (7)(C) (witness.)
33. Transcript of August 16, 2010, interview of (b) (6), (b) (7)(C) (witness.)
34. Transcript of October 10, 2010, interview of (b) (6), (b) (7)(C) (witness.)
35. Transcript of October 18, 2010, interview of (b) (6), (b) (7)(C) (witness.)
36. Transcript of December 1, 2010, interview of (b) (6), (b) (7)(C) (witness.)
37. Transcript of December 1, 2010, interview of (b) (6), (b) (7)(C) (witness.)
38. Transcript of November 19, 2010, interview of (b) (6), (b) (7)(C), (b) (6), (b) (7)(C), Washington, D.C. (respondent.)
39. Transcript of November 29, 2010, interview of (b) (6), (b) (7)(C), Deputy Assistant Inspector General for Investigations, United States Postal Service-Office of Inspector General, Rosslyn, Virginia (respondent.)
40. Transcript of November 29, 2010, interview of (b) (6), (b) (7)(C), Assistant Inspector General for Investigations, United States Postal Service-Office of Inspector General, Rosslyn, Virginia (respondent.)
41. Transcript of December 6, 2010, interview of (b) (6), (b) (7)(C), Inspector General, United States Postal Service (respondent.)
42. United States Postal Service-Office of Inspector General Case Number 11UIHQ0001GC26IAD